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SUPREME COURT OF THE UNITED STATES.

No. 13.

HUGH BOYLE, COMPLAINANT AND APPELLANT,

VERSUS

JAMES W. ZACHARIE AND SAMUEL H. TURNER.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit.

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the eighth day of May, in the year of our Lord one thousand eight hundred and twenty-nine—

Present,

The Honorable GABRIEL DUVALL, one of the Associate Justices of the Supreme Court of the United States; the Honorable Elias Glenn, Judge of Maryland district; Nathaniel Williams, Esq., Attorney; Thomas Finley, Esq., Marshal; Philip Moore, Clerk.

and at the place at which said commission would be opened and executed, and diligently examined, in pursuance to the notice hereto annexed, and his testimony was by me reduced to writing, and signed by said William H. Richardson, clerk of the Council of State, with his own proper hand, in my presence. In witness whereof, I have hereto set my hand and seal, this 21st day of March, 1828.

[SEAL.] JOSEPH TATE, *Mayor of the City of Richmond and sole acting Commissioner.*

In the House of Delegates, Tuesday, 18th November, 1783.—*Resolved*, That the petition of Josiah Parker, praying that he may be allowed the bounty in land by law given to colonels in the continental line, is reasonable.

Test: JOHN BECKLEY, *C. H. D.*

1783, November 20th.—Agreed to by the Senate.

WILLIAM DREW, *C. S.*

A copy, JOHN BECKLEY, *C. H. D.*

The foregoing is a true copy of a paper filed in the Executive Department of Virginia.

5th Feb. 1828. WM. H. RICHARDSON, *Clerk Council of State.*

This is the document referred to, in marked (A), in the deposition of William H. Richardson, clerk of the Council of State.

JOSEPH TATE, *sole acting Commissioner.*

THE STATE OF OHIO, *Brown county*, ss.

I, John H. Shepherd, clerk of the Supreme Court for the county of Brown, in the State of Ohio, do hereby certify that the foregoing is a true copy of the record and proceedings, and also of the exhibits and testimony filed in the case of Josiah O. Parker, against Cadwallader Wallace.

In testimony whereof, I have hereunto set my hand, and fixed my seal of office, at Georgetown, this ninth day of June, A. D. 1829.

[L. S.] JOHN H. SHEPHERD,

Clerk Supreme Court for Brown county, Ohio.

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THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit.

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the eighth day of May, in the year of our Lord one thousand eight hundred and twenty-nine—

Present,

The Honorable GABRIEL DUVALL, one of the Associate Justices of the Supreme Court of the United States; the Honorable Elias Glenn, Judge of Maryland district; Nathaniel Williams, Esq., Attorney; Thomas Finley, Esq., Marshal; Philip Moore, Clerk.

Among other, were the following proceedings, to wit:

Hugh Boyle vs. James W. Zacharie and Samuel H. Turner.

Be it remembered, that heretofore, to wit, on the seventh day of April, in the year of our Lord one thousand eight hundred and twenty-eight, came Hugh Boyle, by William Wirt and Richard B. Magruder, Esquires, his attorneys or solicitors, and exhibited his bill of complaint against James W. Zacharie and Samuel H. Turner, in form following, to wit:

To the Honorable the Judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland:

Humbly complaining, sheweth unto your honors your orator Hugh Boyle, of the city of Baltimore, in the State of Maryland aforesaid, a citizen of the State of Maryland, that heretofore, to wit, some time in the year eighteen hundred and seventeen or eighteen hundred and eighteen, your orator had a ship called the Mohawk, in New Orleans, which ship he had consigned to Messrs. Broadlove and Bradford, of that place, who, not being able to obtain a freight for the ship, placed her in the hands of Messrs. Vincent Nolte and Company, of New Orleans, merchants; and did so without the knowledge or consent of your orator. That the master of the ship being very extravagant, and the last mentioned consignees, Nolte and Company, being improvident, they advanced money whenever the captain called for it, without inquiring whether such advances were necessary disbursements for the ship, and when, in point of fact, the master lost large sums of money in gambling, and as your orator believes with the knowledge of that fact by said Nolte and Company, who nevertheless supplied him with money, and charged it to the ship, until they made up an account for about five thousand four hundred and fifty dollars, for which they drew a draught upon your orator, who never having before paid so large a sum of money for disbursements of a ship upon such a voyage, and believing the amount to be unjust and extravagant, refused to accept the draft, except to the amount of three thousand dollars, which sum your orator paid, and caused the draught to be protested for the remainder; and it was returned after protest to New Orleans. On the arrival of the protest, your orator had lying at New Orleans a brig, which had been consigned to James W. Zacharie and Samuel H. Turner, merchants, carrying on business there under the firm of Zacharie and Turner, which brig was loaded, and ready to sail for Liverpool when she was attached by legal process issued at the suit of Nolte and Company, and the said Zacharie and Turner became security upon the said attachment, which was laid for the purpose of recovering the debt which your orator had theretofore refused to pay, when drawn upon as aforesaid by the said Nolte and Company. Your orator further states, that, for the purpose of indemnifying themselves against risk, by reason of their having become security to the attachment aforesaid, the said Zacharie and Turner prevailed upon the master of the said brig, he being a part owner of her to the extent of one fourth, to give to them a lien on the freight, which was payable at Liverpool; and before they would consent to release their said lien, they transmitted to Baltimore a paper or instrument of indemnity to them, to be signed and executed by your orator, and by security to be given by him; and your orator having prevailed upon Lemuel Taylor, Esquire, of Baltimore, to join your orator in executing said paper, it was executed by your orator, and by the said Lemuel Taylor as the security of your orator, and

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delivered over to Mr. John C. Wederstrandt, of Baltimore, who hath since removed to New Orleans, and who acted on the behalf of the said Zacharie and Turner. Your orator has no means of ascertaining the exact contents of the said paper or instrument of indemnity, not having kept a copy of the same, and not being able to procure one, although he hath made application for it to a certain David Williamson, one of the firm of Luke Tiernan and Sons, in whose hands he believes the said paper once was lodged, and hath requested of said Williamson a copy.

Your orator further states, that, shortly after this transaction, he became embarrassed in business, suspended payment, and was compelled, on or about the thirty-first day of December, in the year eighteen hundred and nineteen, to apply to the Commissioners of Insolvent Debtors in Baltimore for the benefit of the insolvent laws of Maryland, and on that occasion returned the claim of Zacharie and Turner in his schedule, as he presumed he was bound to do, whether he regarded it as a just debt or not, although he never considered it a debt which in equity he ought to have been bound for, however he might have committed himself in law by reason of his having signed the document or paper transmitted from New Orleans, to be executed by him with security, as herein before set forth.

And your orator further states, that he was duly and finally discharged under the insolvent laws of Maryland; and having been sued by the said Zacharie and Turner, in the circuit court of the United States for the fourth circuit in and for the district of Maryland, a judgment was obtained against him at May term of said court, in the year eighteen hundred and twenty-one, for the sum of $3,113 80, with interest from the fifteenth November, eighteen hundred and nineteen, besides costs of suit, subject, however, to the legal operation of the discharge which your orator had obtained under the said insolvent laws of Maryland, as will more fully appear on reference to the short copy of said judgment herewith filed, marked exhibit A, which your orator prays may be received and considered as part of this his bill of complaint.

Your orator further states, that the said Zacharie and Turner have caused to be issued out of the said court an execution on the said judgment, and from time to time have renewed the same, and thereby kept the same alive, and have actually placed a writ of *fieri facias*, issued upon the said judgment, in the hands of the Marshal of the district of Maryland, who has been directed by the counsel of the said Zacharie and Turner to levy the same upon certain property standing in the name of your orator, and which property has been acquired by your orator, so far as he has an interest therein, since his said application for the benefit of the insolvent laws; and amongst the said property is the ship General Smith, of Baltimore, which your orator is apprehensive will be seized by the Marshal, and detained here, greatly to his inconvenience, and probably to his serious damage.

And your orator further states, that, some time in the year eighteen hundred and twenty-one, your orator recommenced business in the city of Baltimore, and some time thereafter, to wit, on or about the twenty-second day of July, in the year eighteen hundred and twenty-one, the said Zacharie consigned a vessel to your orator, which arrived at Baltimore, and proposed to your orator to take the amount of the said judgment out in commissions, to be earned by your orator on said consignment, and such future consignments as the said Zacharie should make to your orator, he your orator, according to said proposal, of said Zacharie being obliged to take out of the

proceeds of such consignments only one-half of the commission to which he would be entitled, and to pass the other half to the credit of the said judgment, to which your orator consented, and did actually credit the said Zacharie and Turner, on account of said judgment, and in part payment thereof, on the said consignment, with one-half of the said commissions, that is to say, with the sum of $45 43, being the whole commissions on that consignment, and $37 32, being half commissions on a second transaction, as he will be prepared at the proper time to prove to the satisfaction of your honors, and for no part of which sum have the said Zacharie and Turner ever yet given credit to your orator on said judgment, but on the contrary now seek to enforce the payment of the whole of the said judgment against your orator.

And your orator further states, that, some time in the year eighteen hundred and twenty-two or eighteen hundred and twenty-three, the precise time your orator does not recollect, but will be prepared at a proper time to establish the same by proof fully to the satisfaction of your honors, the said Zacharie and Turner caused an attachment, or some other judicial proceeding in the nature of a writ of attachment, to be issued out of some one of the courts of Louisiana; and which said writ or process of attachment was founded upon the said claim of said Zacharie and Turner, for which the judgment aforesaid was obtained, and the same was by their direction laid in the hands of a certain Ambrose Nelson, of New Orleans, who was a debtor to your orator in a large amount, and whereby your orator has been deprived of the benefit of any part of the debt now due by the said Nelson to your orator, being somewhere about the sum of fifteen hundred dollars, besides interest thereon from the said year when the attachment aforesaid was laid, and which sum is as completely lost to your orator as if it had been paid over to the said Zacharie and Turner, who, for aught your orator knows to the contrary, may have actually recovered the whole of it in virtue of said attachment, and may have refused to give credit for the same, as they have done for the commissions on the shipment or consignment made to your orator, as herein before mentioned.

And your orator further states, that they also attached property belonging to your orator which was in the hands of Messrs. Broadlove and Bradford, of New Orleans, for which your orator has never received any credit, although it has been thus far completely lost to him, amounting, as he verily believes, to the sum of as per invoice to $593 93, including interest to this time. Your orator is advised that he is protected in the enjoyment of all property acquired by him since the date of his discharge under the insolvent laws aforesaid, except such as he might have acquired by gift, descent, or in his own right by bequest, devise, or in any course of distribution, and that he hath not acquired any property of any kind in any of the modes thus specified since his said discharge; and he is advised that, by the law of the land, his final discharge under the said insolvent laws is a complete protection against the judgment aforesaid, as well of his person as of all property acquired by him, except in some one of the above modes, and that no property whatever, of which he is in possession, or which he may actually own, is liable to any execution under the said judgment, until a *scire facias*, containing an averment of the acquisition of property in some one or more of the above modes by him since his said discharge shall have been first issued, and found to be true, either by confession, by the verdict of a jury, or otherwise according to law.

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And he is further advised, that, even admitting the liability of his acquisitions since the said discharge to execution under the said judgment, he is entitled to credit for the several amounts attached as herein before mentioned, and for the amount of commissions credited on said shipment, and passed to the credit of said Zacharie and Turner; and he is further advised, that, pending the said attachments, and any other judicial proceedings which may have been instituted on said judgment against the effects of your orator elsewhere than in the State of Maryland, no execution or other process ought to issue out of this court upon such judgment until the said attachments or other suits have been decided.

In tender consideration whereof, and for as much as your orator hath no remedy in the premises at law, and can only obtain through the aid and interposition of a court of equity relief against the acts and doings of the said Zacharie and Turner, so contrary to equity, and, as your orator humbly conceives, oppressive and illegal; and to the end that your orator may obtain such relief, may it please your honors to cause to be issued to the said James W. Zacharie and Samuel H. Turner, of New Orleans, in the State of Louisiana, the writ of this court of subpœna, to be to them directed, commanding them and each of them to be and appear before your honors in this honorable court, at a convenient day to be therein named, and under a certain penalty therein to be prescribed; and that they and each of them may be compelled to answer the facts herein before set forth, fully and particularly as if they and each of them were thereto specially interrogated; and that they and each of them may be required, after answering the said bill in substance, upon their respective corporal oaths to be duly administered to them, to answer particularly whether they, or one of them, and which, did not consign to your orator some time in the year eighteen hundred and twenty-one, and if not, then at some other time, and when, a vessel, and whether the said Boyle, your orator, was not authorized to deduct from the commissions earned on such consignment one-half thereof, and did not apply the other half in part satisfaction of the judgment or claim of the said Zacharie and Turner against him, and whether he, the said Boyle, has ever been credited for said amount, and whether it was not proposed by the said Zacharie and Turner, or one of them, and which, that, on all future consignments to be made to said Boyle by the said Zacharie and Turner, or by the said Zacharie, (as the case might be,) the same deduction of one-half of the regular commissions chargeable on such consignments should be credited to said Boyle, on said claim, until the same should be finally extinguished; and whether or not the said Zacharie and Turner, or one of them, and which, did not, since the year eighteen hundred and twenty-one, and what at time, cause to be issued writs of attachment, or some other judicial process of the nature of an attachment, upon the said judgment, or upon the said claim of the said Zacharie and Turner, against your orator, the said Hugh Boyle; and whether the said attachments or other legal process was not laid in the hands of the said Ambrose Nelson, and of the said Broadlove and Bradford, of New Orleans, or otherwise so served upon or notified to them, the said Nelson, and Broadlove and Bradford, as to arrest them from paying over to your orator the sums of money then due by them, the said Nelson, and Broadlove and Bradford, to your orator; and whether or not the said attachments, or legal process in that nature, have as yet been decided by the courts, or other authorities before whom they were pending, and what is the present situation of the said attachments, suits, or other process; and particular-

ly whether the said Zacharie and Turner, or either of them, or their counsel, solicitor, or attorney, prosecuting the said writs of attachment or other proceedings, or any person acting on their behalf, have received from the said Nelson, and Broadlove and Bradford, or either of them, and which, any part of the said amounts so as aforesaid due by them to your orator, and attached as aforesaid, and how much, if any, has been so received, and when was the same received, and whether the same has ever been credited to your orator on account of the said claim or judgment against him.

And your orator further prays your honors, in the meantime, to grant to him the writ of injunction of this court, to be issued to the said James W. Zacharie and Samuel H. Turner, and each of them, commanding them, and each of them, their and each of their agents, attorney or attorneys, servants, or any and all other persons acting on their behalf, and particularly the Marshal of Maryland district, to abstain from and absolutely surcease from further proceeding to enforce the execution of the said judgment against your orator, until the matter can be heard in equity, or until the further order of this court. And your orator prays such other and further relief in the premises as to your honors may seem meet and proper, and as his case may, upon a full examination into its merits, seem to your honors in justice to require; and your orator, as in duty bound, will ever pray, &c.

WM. WIRT,
R. B. MAGRUDER,
Solicitors for Complainant.

Mr. MOORE: Issue subpœna and injunction in usual form, as prayed, against the plaintiffs at law, and their attorneys, solicitors, and agents, and against the Marshal, commanding them and each of them to stay and surcease from all proceedings at law in this case, until the further order of the circuit court. G. DUVALL.

Whereupon issued writs of subpœna and injunction in form following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit.

To James W. Zacharie and Samuel H. Turner, greeting:

You are hereby commanded that all excuses and delays set aside, you be and appear before the Judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland, at the masonic hall in the city of Baltimore, on the eighth day of May next, to answer unto the complaint of Hugh Boyle, against you in the said court exhibited.

Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and twenty-eight.

R. B. M. Issued 8th April, 1828.

[SEAL.] PHILIP MOORE, *Clerk C. C.*

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, to wit.

To James W. Zacharie and Samuel H. Turner, you and each of you, your and each of your agents, attorney, or attorneys, servants, or any and all other persons acting on their behalf, and particularly the Marshal of Maryland district, greeting:

Whereas on the seventh day of April, in the year of our Lord one thousand eight hundred and twenty-eight, Hugh Boyle, by his solicitors, did file

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his bill of complaint against you as defendants, setting forth that some time in the year 1817 or 1818, the orator had a ship, called the Mohawk, in New Orleans, which ship had been consigned to Messrs. Breadlove and Bradford, of that place, who, not being able to obtain a freight for the ship, placed her in the hands of Messrs. Vincente Nolte & Co., of New Orleans, merchants, and did so without the knowledge or consent of the orator: that the master of the ship being very extravagant, and the last mentioned consignees, Nolte & Co., being improvident, they advanced money whenever the master called for it, without inquiring whether such advances were necessary disbursements for the ship, and when in point of fact the master lost large sums of money in gambling, and as the orator believes with the knowledge of that fact by said Nolte & Co., who nevertheless supplied him with money, and charged it to the ship, until they made up an account for about five thousand four hundred and fifty dollars, for which they drew a draft upon the orator, who, never having before paid so large a sum of money for disbursements of a ship upon such a voyage, and believing the amount to be unjust and extravagant, refused to accept the draft, except to the amount of three thousand dollars; which sum the orator paid, and caused the draft to be protested for the remainder, and it was returned after protest to New Orleans. On the arrival of the protest the orator had lying at New Orleans a brig, which had been consigned to James W. Zacharie and Samuel H. Turner, merchants, carrying on business there under the firm of Zacharie & Turner, which brig was loaded and ready to sail for Liverpool when she was attached by legal process issued at the suit of Nolte & Co., and the said Zacharie and Turner became security upon the said attachment, which was laid for the purpose of recovering the debt which the orator had theretofore refused to pay when drawn upon as aforesaid by the said Nolte & Co. The orator further states, that, for the purpose of indemnifying themselves against risk by reason of their having become security to the attachment aforesaid, the said Zacharie and Turner prevailed upon the master of the said brig, he being a part owner of her to the extent of one fourth, to give them a lien on the freight, which was payable at Liverpool; and before they would consent to release their said lien, they transmitted to Baltimore a paper or instrument of indemnity to them, to be signed and executed by the orator, and by security to be given by him; and the orator having prevailed upon Lemuel Taylor, Esquire, of Baltimore, to join the orator in executing said paper, it was executed by the orator, and by the said Lemuel Taylor as the security of the orator, and delivered over to Mr. John C. Wederstrandt, of Baltimore, who hath since removed to New Orleans, who acted on behalf of the said Zacharie and Turner. The orator has no means of ascertaining the exact contents of the said paper or instrument of indemnity, not having kept a copy of the same, and not being able to procure one, although he hath made application for it to a certain David Williamson, one of the firm of Luke Tiernan & Sons, in whose hands he believes the said paper once was lodged, and hath requested of said Williamson a copy.

The orator further states, that, shortly after this transaction, he became embarrassed in business, suspended payment, and was compelled, on or about the 31st day of December, in the year 1819, to apply to the commissioners of insolvent debtors in Baltimore for the benefit of the insolvent laws of Maryland, and on that occasion returned the said claim of Zacharie and Turner in his schedule, as he presumed he was bound to do, whether he regarded it as a just debt or not, although he never considered it a debt which in

equity he ought to have been bound for, however he might have committed himself in law by reason of his having signed the document or paper transmitted from New Orleans to be executed by him with security, as herein before set forth.

The orator further states, that he was duly and finally discharged under the insolvent laws of Maryland; and having been sued by the said Zacharie and Turner in the circuit court of the United States for the fourth circuit in and for the Maryland district, a judgment was obtained against him at May term of said court, in the year 1821, for the sum of $3,113 80, with interest from the 15th November, 1819, besides costs of suit, subject, however, to the legal operation of the discharge which the orator had obtained under the said insolvent laws of Maryland.

The orator further states, that the said Zacharie and Turner have caused to be issued out of the said court an execution on the said judgment, and from time to time have renewed the same, and thereby kept the same alive, and have actually placed a writ of fieri facias, issued upon the said judgment, in the hands of the marshal of the district of Maryland, who has been directed by the counsel of the said Zacharie and Turner to levy the same upon certain property standing in the name of the orator, and which property has been acquired by the orator, so far as he has an interest therein, since his said application for the benefit of the said insolvent laws; and amongst the said property is the ship General Smith, of Baltimore, which the orator is apprehensive will be seized by the Marshal and detained here, greatly to his inconvenience, and probably to his serious damage.

And the orator further states, that, some time in the year 1821, the orator recommenced business in the city of Baltimore, and some time thereafter, to wit, on or about the 22d day of July, in the year 1821, the said Zacharie consigned a vessel to the orator, which arrived at Baltimore, and proposed to the orator to take the amount of the said judgment out in commissions to be earned by the orator on said consignment and such future consignments as the said Zacharie should make to the orator; he, the orator, according to said proposal of said Zacharie, being obliged to take out of the proceeds of such consignments only one half of the commissions to which he would be entitled, and to pass the other half to the credit of the said judgment, to which the orator consented, and did actually credit the said Zacharie and Turner on account of said judgment, and in part payment thereof, on the said consignment, with one half of the said commissions, that is to say, with the sum of $45 43, being the whole commissions on that consignment, and $87 32, being half commissions on a second transaction, as he will be prepared at the proper time to prove to the satisfaction of the court, and for no part of which sums have the said Zacharie and Turner ever yet given credit to the orator on said judgment, but, on the contrary, now seek to enforce the payment of the whole of the said judgment against the orator.

And the orator further states, that, some time in the year 1822 or in 1823, the precise time the orator cannot recollect, but will be prepared at a proper time to establish the same fully by proof to the satisfaction of the court, the said Zacharie and Turner caused an attachment, or some other judicial proceeding in the nature of a writ of attachment, to be issued out of some one of the courts of Louisiana, and which said writ or process of attachment, was founded upon the said claim of said Zacharie and Turner, for which the judgment aforesaid was obtained, and the same was by their direction laid in the hands of a certain Ambrose Nelson, of New Orleans, who was a

debtor to the orator in a large amount, and whereby the orator has been deprived of the benefit of any part of the debt now due by the said Nelson to the orator, being somewhere about the sum of $1,500, besides interest thereon from the said year when the attachment aforesaid was laid, and which sum is as completely lost as if it had been paid over to the said Zacharie and Turner, who, for aught the orator knows to the contrary, may have actually recovered the whole of it in virtue of said attachment, and may have refused to give credit for the same, as they have done for the commissions on the shipment or consignment made to the orator, as herein before mentioned.

And the orator further states, that they also attached property belonging to the orator, which was in the hands of Messrs. Breadlove and Bradford of New Orleans, for which the orator has never received any credit, although it has been thus far completely lost to him, amounting, as he verily believes, to the sum of, as per invoice, to $593 93 cents, including interest to this time. The orator is advised that he is protected in the enjoyment of all property acquired by him since the date of his discharge under the insolvent laws aforesaid, except such as he might have acquired by gift, descent, or in his own right by bequest, devise, or in any course of distribution, and that he hath not acquired any property of any kind, in any of the modes thus specified, since his said discharge; and he is advised, that by the law of the land his final discharge under the said insolvent laws is a complete protection against the judgment aforesaid, as well of his person as of all property acquired by him, except in some one of the above modes; and that no property whatever of which he is in possession, or which he may actually own, is liable to any execution under the said judgment, until a scire facias, containing an averment of the acquisition of property in some one or more of the above modes by him, since his said discharge, shall have first issued, and found to be true, either by confession, by the verdict of a jury, or otherwise according to law. And he is further advised, that, even admitting the liability of his acquisitions since the said discharge to execution under the said judgment, he is entitled to credit for the several amounts attached as herein before mentioned, and for the amount of commissions credited on said shipment, and passed to the credit of said Zacharie and Turner; and he is further advised, that pending the said attachments, and any other judicial proceedings which may have been instituted on said judgment against the effects of the orator elsewhere than in the State of Maryland, no execution or other process ought to issue out of this court upon such judgment, until the said attachments or other suits shall have been decided. In tender consideration whereof, may it please the court to cause to be issued, to the said James W. Zacharie and Samuel Turner of New Orleans, the writ of this court of subpœna, to be to them directed, commanding them to be and appear before the court, at a convenient day therein to be named, and under a certain penalty therein to be prescribed, to answer the facts herein before set forth. And the orator further prays the court to grant to him the writ of injunction of this court, to be issued to the said James W. Zacharie and Samuel Turner, commanding them, their agents, attorneys, servants, or any and all other persons acting on their behalf, and particularly the Marshal of Maryland district, to abstain from, and absolutely surcease from further proceedings to enforce the execution of the said judgment against the orator, until the matter can be heard in equity, or until the further order of this court.

We having regard to the matters aforesaid, do, therefore, strictly command and enjoin you, the said James W. Zacharie and Samuel Turner, you and each of you, and your and each of your agents, attorney or attorneys, servants, or any and all other persons acting on your behalf, and particularly the Marshal of Maryland district, to abstain from and absolutely surcease from further proceedings to enforce the execution of the judgment against the orator, until the further order of our said court. Hereof you are not to fail, as you will answer the contrary at your peril. Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and twenty eight.

R. B. M. Issued 8th April, 1828. PHILIP MOORE, *Clerk C. C.*

At which said eighth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, being the return day of the aforegoing writs of subpœna and injunction, come into the circuit court here the said Hugh Boyle, by his solicitors aforesaid, and the Marshal of the district of Maryland aforesaid, and makes return of the said writ of subpœna and injunction, to the court here thus endorsed, to wit:

On the writ of subpœna, "Not served.

"THOMAS FINLEY, *Marshal.*"

On the writ of injunction, "Served on the defendants' attorneys.

"THOMAS FINLEY, *Marshal.*"

And said James W. Zacharie and Samuel H. Turner appear in the circuit court here, by John Scott, their solicitor.

Afterwards, to wit, on the fourth day of August, in the year of our Lord one thousand eight hundred and twenty-eight, the said James W. Zacharie and Samuel H. Turner, by John Scott and John Glenn, their solicitors, file in court here the following petition, to wit:

HUGH BOYLE, *against* JAMES W. ZACHARIE, SAMUEL H. TURNER. } *On the equity side of the circuit court of the United States for the fourth circuit, district of Maryland.*

The petition of James W. Zacharie and Samuel H. Turner respectfully sheweth to the honorable the Judges of said court, that they, the said defendants, are citizens of the State of Louisiana, one of the United States of America, and they therefore pray that a dedimus potestatem be issued to certain persons, citizens of the State of Louisiana, to take the answers of the said defendants to the complainant's bill of complaint.

J. SCOTT,
J. GLENN,
For defendants.

Whereupon the court made and passed the following order, to wit:

HUGH BOYLE, *against* JAMES W. ZACHARIE, SAMUEL H. TURNER. } *On the equity side of the circuit court of the United States for the fourth circuit in and for the district of Maryland.*

On petition of the defendants, by their counsel, it is ordered that a dedimus potestatem be issued to Thomas S. Kennedy and Levi Pearce, of the city

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of New Orleans, and State of Louisiana, and to such other two persons as may be named on the part of the complainant, if any shall be named within ten days to the clerk of this court, with power to them, or any three or two of them, to take the answer of the defendants, on their oath or solemn affirmation, to the bill of the complainant: provided a copy of this order be served on the complainant in two days from the date hereof.

ELIAS GLENN, *district Judge*
August 4, 1828. *of the U. S. for the district of Maryland.*

CITY OF BALTIMORE, set.

Be it remembered, that, on this twenty-first day of August, eighteen hundred and twenty-eight, before me, the subscriber, a justice of the peace of the State of Maryland in and for the city aforesaid, personally appears Thomas Parkin Scott, and makes oath on the Holy Evangely of Almighty God, that, on the day of the date of the within order, he, deponent, called at the counting-room of Hugh Boyle, the complainant therein named, for the purpose of serving on said Hugh Boyle an office copy, examined by deponent, of the within order, but that the said Hugh Boyle was not in his counting-room, and deponent left the said copy with Mr. Thomas Higinbotham, the clerk of Mr. Boyle, at the said counting room, with directions that it should be given to Mr. Boyle immediately upon his coming to the counting-room. And now, also, at the same time, personally appears John Scott, and makes oath on the Holy Evangely of Almighty God, that, on the fifth day of August, instant, said Hugh Boyle admitted to this deponent that he, Hugh Boyle, had received the office copy of the within order above referred to. Sworn to before

T. H. BELT.

Afterwards, to wit, on the twenty-third day of August, in the year of our Lord one thousand eight hundred and twenty-eight, a dedimus potestatem issued in form following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF MARYLAND TO WIT.
To Thomas S. Kennedy and Levi Pearce, of the city of New Orleans, Esquires, greeting:

Whereas Hugh Boyle hath lately exhibited his bill of complaint in the circuit court of the United States for the fourth circuit in and for the Maryland district, on the equity side of the said circuit court, against James W. Zacharie and Samuel H. Turner, defendants; and whereas we have, by our writ, lately commanded the said defendants, James W. Zacharie and Samuel H. Turner, to appear before the said circuit court at a certain day now past, to answer the said bill;

Know ye that we have given unto you, or either of you, full power and authority, in pursuance of the special order of our said court, to take the answer of the said defendants, James W. Zacharie and Samuel H. Turner, on their corporal oath, upon the Holy Evangely of Almighty God, to be administered by you or either of you; that, at such day and place as you shall think fit, you go to the said defendants, if they cannot conveniently come to you, and take their several answer as aforesaid to the said bill, the same being plainly and distinctly written; and when you shall have so done, you are to send the same, closed up, under your or either of your hands and

seals, unto the said circuit court, with all convenient speed. Witness the Honorable John Marshall, Chief Justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and twenty-eight.

J. S. Issued 23d August, 1828. PHILIP MOORE, *C. C. C.*

Afterwards, to wit, on the sixth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, the said James W. Zacharie and Samuel H. Turner, by their solicitors, filed in the circuit court here the following answer, to wit:

The joint and separate answer of James W. Zacharie and Samuel H. Turner, residents in New Orleans, in the State of Louisiana, and citizens of State of Louisiana, and of the United States, defendants, to the bill of complaint of Hugh Boyle, a citizen of the State of Maryland, exhibited and filed against them before the honorable the Judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland.

These defendants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as materially concerns these defendants to make answer unto, they answer and say, that these defendants know nothing of the concerns of the ship Mohawk, or of the transactions of the complainant with the house of Breedlove and Bradford, or with that of Vincent Nolte and Company, mentioned in the bill; and these defendants can neither admit or deny the same to be true; and so far as the same may concern these defendants, they put the complainant upon the proof thereof; but these defendants say, that, in the latter part of the year 1818, a brig called "The Fabius" was consigned by the complainant to the commercial house or firm of Zacharie and Turner, of New Orleans, which said firm was composed of these defendants, but hath since been dissolved.

And these defendants, further answering, say, that the said firm of Zacharie and Turner procured a freight for the said brig for Liverpool, and that her cargo was actually laden on board; and these defendants say that when the said brig was about to sail on the said voyage, she was attached at the suit of Vincent Nolte and Edward Hollander, trading under the firm of Vincent Nolte & Co., for a debt due to the said Vincent Nolte & Co., from the complainant; and that these defendants and one Richard Relf, with a view to benefit the complainant, and to enable hiss aid brig to prosecute her voyage, became security for the said complainant, and procured the release of his said brig.

And these defendants, further answering, say, that the said brig proceeded on her voyage and earned her freight, as these defendants have been informed and believe to be true; and that the complainant so far from disapproving of the acts of these defendants as before stated, thanked them for their prompt and correct management of his business, and undertook and promised to indemnify them from any loss which they might sustain on his account.

And these defendants, further answering, say, that the said Hugh Boyle did pretend to give to these defendants a security for their said liability on his account, and did, on or about the 1st day of May, 1819, deliver to John C. Wederstrandt, of the city of Baltimore, as their agent, a paper writing signed "Lemuel Taylor," purporting to indemnify them for what-

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ever sum they may have to pay Vincent Nolte & Co. on account of a bill drawn by them on Hugh Boyle; and these defendants say that they have heard, and believe it to be true, that then, or shortly afterwards, the said Lemuel Taylor was or became an insolvent debtor. And these defendants further say, that they have also been advised that the said paper writing was a mere nudum factum within the provision of the statute of frauds, and in no manner binding upon the said Lemuel Taylor, if he had been solvent; and these defendants herewith exhibit and file the said paper writing, marked exhibit A, and pray that the same may be taken and considered as part of this their answer to the complainant's said bill of complaint.

And these defendants further say, that the said Vincente Nolte & Co. obtained a judgment against the said Hugh Boyle for a very large sum of money, and that these defendants were compelled to pay the said judgment; and these defendants afterwards instituted their suit in this honorable court against the said Hugh Boyle to recover the money and expenses so incurred on his account, and obtained their judgment against the said Hugh Boyle, and have caused an execution to be issued thereon, as hath been stated in the plaintiff's said bill of complaint.

And these defendants, further answering, say, that they have been informed that the said Hugh Boyle did make application for, and obtained the benefit of the insolvent laws of the State of Maryland; but these defendants say that they have been advised that the said discharge does not in any manner prevent these defendants from having the full benefit of their said execution against the goods and chattels of the said Hugh Boyle, and that the ship upon which the same was levied then was the property of the said Hugh Boyle, acquired since his said discharge; that he hath acquired property to a large amount since his discharge, and that all property, so acquired, is liable for the payment of his debts.

And these defendants, further answering, say, that they do admit that James W. Zacharie did afterwards agree to accept in part payment of the said debt, or to give the complainant credit for one half the commissions earned by any consignments which the said James W. Zacharie might send to him; and that the complainant has been credited with the sum of twenty-two dollars and seventy-two cents on one consignment, and with the sum of thirty-seven dollars and thirty-two cents on another consignment.

And these defendants, further answering, say, that, on the 7th day of April, eighteen hundred and twenty, they did cause to be issued from the court of the first judicial district of Louisiana, a writ of attachment against the said complainant, in consequence of information received from himself and at his request, to affect a sum of money alleged to be in the hands of Breedlove, Bradford & Robinson, but that the said Breedlove, Bradford & Robinson denied having any funds belonging to the said complainant in their possession, liable to the said attachment, and that the said process was accordingly dismissed.

And these defendants, further answering, say, that they also admit, that, on or about the twenty-fourth day of May, eighteen hundred and twenty-five, they did cause a second writ of attachment to be issued from the said court, to affect a sum of money supposed to be due to the complainant from one Ambrose Nelson, but that the said Ambrose Nelson denied having any funds belonging to the said complainant in his possession, and that the said process was accordingly dismissed; and these defendants herewith exhibit and file a transcript of the proceedings of the said court in the said

attachments, marked B and C, and which they pray may be taken and considered as a part of this their answer to the complainant's said bill of complaint.

And these defendants, further answering, say, that they have received no other payment on their said judgment than what has been already herein before stated, to wit, the sum of twenty-two dollars and seventy-two cents, and of thirty-seven dollars thirty-two cents, nor have they received any security or satisfaction for the same; and that the whole amount of their said judgment, with interest and costs, is yet due and owing to them from the said Hugh Boyle, except the payments herein before mentioned. And these defendants deny all unlawful proceedings against the said complainant. Without that there is any other matter or thing material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matter and things these defendants are ready to aver and prove, as this honorable court shall direct and award, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and that the said injunction may be dissolved.

JOHN SCOTT, *Sol. for defend'ts.*

J. W. ZACHARIE,
S. H. TURNER.

STATE OF LOUISIANA—CITY OF NEW ORLEANS.

Be it remembered, that on this thirtieth day of October, in the year of our Lord one thousand eight hundred and twenty eight, personally appear James W. Zacharie and Samuel H. Turner, the defendants named in the aforegoing answer, and severally make oath, on the Holy Evangely of Almighty God, that the several matters and facts set forth and stated in the said answer, as of their own knowledge, are true as stated, and that the several matters and facts therein set forth and stated as derived from the knowledge of others, and from documentary evidence, they believe to be true as stated.

J. W. ZACHARIE,
S. H. TURNER.

[L. S.] LEVI PEARCE, *Commissioner.*

EXHIBIT A.

I will see Messrs. Zacharie and Turner paid whatever sum they have to to pay Vincent Nolte & Co., on account of a bill drawn by them on Hugh Boyle for disbursements of the ship Mohawk, original bill amount $5,451, of which the said Hugh Boyle paid $3,000: the balance the said Hugh Boyle contends is not due Vincent Nolte & Co.; when decided it shall be paid.

Baltimore, 1st May, 1819.

LEMUEL TAYLOR.

EXHIBIT B.

93.

THE STATE OF LOUSIANA—FIRST JUDICIAL DISTRICT COURT.

Be it remembered, that on the seventh day of April, in the year of our Lord one thousand eight hundred and twenty, into the district court in and for the first judicial district of the State of Louisiana, holden in the city of New Orleans, came James W. Zacharie and Samuel H. Turner, by N. Morse, Esquire, their attorney, and filed the following petition, to wit:

PETITION.

To the honorable Joshua Lewis, Judge of the first judicial district court of the State of Louisiana:

The petition of James W. Zacharie and Samuel H. Turner, of the city of New Orleans, merchants, trading under the firm of Zacharie and Turner, respectfully shews, that Hugh Boyle, of the city of Baltimore, trading under the firm and surviving partner of Hugh Boyle & Co., is justly indebted to your petitioners in the sum of three thousand one hundred and forty-five dollars and forty-six cents, being the amount of the account annexed, and made part of this petition, for moneys paid and expended for the said defendant, for his use and at his request, on and about the 21st August, 1819, as by the said account will more fully appear; but which, though often requested, the said defendant has neglected to pay; that said defendant resides permanently out of the State of Louisiana, but has property, rights, or credits, within the jurisdiction of this court, to wit, in the hands of Breedlove, Bradford, and Robeson, of the city of New Orleans, merchants, and Kenny Laverty: wherefore your petitioners pray that process of attachment may be issued against the property of said Hugh Boyle & Co., within the jurisdiction of this court, and that the same may be attached, and sold to amount sufficient to satisfy your petitioners' demand, and that judgment be entered in their favor against the defendant for the amount aforesaid, with interest and costs of suit; and that said Breedlove, Bradford, and Robeson, and Kenny Laverty, may severally answer on oath the following interrogatories:

1st. Are you indebted to the defendant, Hugh Boyle, or Hugh Boyle & Co., in any and what sum of money?

2d. Have you in your possession, or under your control or custody, any property, goods, chattels, rights, credits, moneys, or effects, belonging to Hugh Boyle, or Hugh Boyle & Co.? Set forth the same particularly.

N. MORSE, *Attorney for plaintiffs.*

James W. Zacharie, one of the petitioners, makes oath that the defendant in the above petition named is justly indebted to the petitioners in the sum of three thousand one hundred and forty-five dollars and forty-six cents, and that said defendant resides permanently out of the State of Louisiana.

J. W. ZACHARIE.

Sworn and subscribed before me, this 7th day of April, 1820.

MARTIN GORDON, *Clerk.*

ACCOUNT.

Hugh Boyle (surviving partner of Hugh Boyle & Co.,) Dr. to Zacharie and Turner.

1819.			
August 21.	To cash paid amount of judgment against you in favor of Vincent Nolte & Co., -	$2,701	84½
	court charges - - -	39	37½
	sheriff's fees, - - -	8	75
	attorney, by order of court, -	100	00
	paid M. Gordon for copy of judgment,	6	25
	paid McLanahan and Bogart, damages on returned bill of exchange, -	285	62
	postages and protest, - -	3	62½
		$3,145	46½

BOND.

Know all men by these presents, that we, Zacharie and Turner, and widow Zacharie, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto Hugh Boyle in the sum of six thousand two hundred and ninety dollars and ninety-two cents, lawful money of the United States of America, to be paid to the said Hugh Boyle, his executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself, our and each of our heirs, executors, and administrators, firmly by these presents: sealed with our seals, and dated the seventh day of April, in the year of our Lord 1820.

Whereas said Zacharie and Turner hath this day presented a petition to the honorable the district court of the State of Louisiana in and for the first judicial district, praying an attachment against the property of the said Hugh Boyle;

Now the condition of the above obligation is such, that, if the above bound Zacharie and Turner shall well and truly pay or cause to be paid to the said Hugh Boyle, the defendant in said attachment, all such damages as the said Hugh Boyle shall or may suffer in case it shall appear that the said attachment hath been wrongfully sued out, then the above obligation to be void, else to remain in full force and virtue.

ZACHARIE & TURNER [L. S.]
By J. W. Zacharie.
WIDOW ZACHARIE [L. S.]

Signed, sealed, and delivered in the presence of,

STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT COURT.

To the Sheriff of the parish of New Orleans:

Whereas due proof has been made before the district court of the State of Louisiana in and for the first judicial district thereof, by J. W. Zacharie, that Hugh Boyle, surviving partner of Hugh Boyle & Co., is indebted to Zacharie and Turner the sum of three thousand one hundred and forty-five dollars forty-six cents, and that the said Hugh Boyle resides permanently out of the State of Louisiana;

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Now, therefore, you are commanded to seize and take into your possession the goods and chattels, lands, tenements, rights, moneys, effects, and credits of the said Hugh Boyle in the said district, to an amount sufficient to secure the payment of the said sum; and that you give notice by leaving a copy of this writ at the last place of abode of the said Hugh Boyle in the district aforesaid, and causing another copy thereof to be put up at the church door of the district in which he last resided; and in what manner you have executed this writ, you make return thereof to our said court, on the first Monday in April next, holden in the city of New Orleans.

Witness Joshua Lewis, Judge of the said court, this seventh day of April, in the year of our Lord one thousand eight hundred and twenty, and in the forty-fourth year of the independence of the United States.

H. FARRIE, *Dep. Clerk.*

Sheriff's return.

Served copy of petition, citation, attachment, and interrogatories on Messrs. Breedlove, Bradford, and Robeson, and one of the same on R. Laverty, April 8th, 1820, and attached in their hands the goods and chattels, lands, tenements, rights, credits, moneys, and effects of the defendant's which they might have, to an amount sufficient (if so much they had) to satisfy the plaintiffs in their demand, posting, at the same time, a copy of this writ at the door of the church in front of the public square in the city of New Orleans.

Returned April 10, 1820.

Citation.

THE STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT COURT.

Messrs. Breedlove, Bradford and Robeson: You are hereby summoned to appear at the office of the sheriff of the parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the first judicial district court, at the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Joshua Lewis, Judge of the said court, the 7th day of April, in the year of our Lord 1820.

H. FARRIE, *Dep. Clerk.*

Sheriff's return.

Served copy of petition and citation on Messrs. Breedlove, Bradford and Robeson, April 8th, 1820.

Returned April 10, 1820.

Citation.

THE STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT COURT.

Mr. Kenney Laverty: You are hereby summoned to appear at the office of the sheriff of the parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the first judicial district court, at the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Joshua Lewis, Judge of the said court, the 7th day of April, in the year of our Lord 1820.

13—3 H. FARRIE, *Dep. Clerk.*

Sheriff's return.

Served a copy of petition and citation on K. Laverty, 8th April, 1820. Returned April 10, 1820.

Afterwards, to wit, on the seventeenth day of April, in the year aforesaid, into the court aforesaid, came the garnishees, and filed the following answer, to wit:

Answer of garnishees.

First Judicial District Court, State of Louisiana.

Answer of Breedlove, Bradford and Robeson, garnishees. Zacharie and Turner vs. *Hugh Boyle, (partner of Hugh Boyle.)*

Answer to 1st interrogatory. We do not consider ourselves in debt to Hugh Boyle or Hugh Boyle & Co. We received of Hugh Boyle & Co. some property, which has been sold, and the proceeds, say twelve or thirteen hundred dollars, placed to their credit on our books; but one of the house holds a claim against Hugh Boyle & Co. for upwards of two thousand five hundred dollars, which amount we refused to admit as a credit to our partner, but were willing to close Hugh Boyle & Co's account by charging him and crediting the partner with the balance due said Boyle, and in this way said balance was held to pay said claim.

Answer to 2d interrogatory. We have no property of the defendant's in this case, nor do we know of any country.

JAS. W. BREEDLOVE.

Sworn to and subscribed before me this 15th April, 1820.

H. FARRIE, *Dep. Clerk.*

Afterwards, to wit, on the third day of May, in the year aforesaid, at a session of the court aforesaid, holden as aforesaid, the following order was entered on record:

Order.

Zacharie and Turner vs. *Hugh Boyle, surviving partner of Hugh Boyle & Co.*

On motion of N. Morse, Esq., of counsel for the petitioners, thereupon ordered by the court that Levi Pearce, Esq., be appointed to defend the interest of the defendant, who resides permanently out of the State of Louisiana.

And afterwards, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, at a session of the court aforesaid, holden as aforesaid, the following order was entered on record, to wit:

Zacharie and Turner vs. *Hugh Boyle, surviving partner of Hugh Boyle & Co. Order of discontinuance.*

On motion of N. Morse, Esq., of counsel for the plaintiffs, it is ordered by the court that this case be discontinued.

95.

State of Louisiana.

I, John L. Lewis, clerk of the first judicial district court of the State of Louisiana, do hereby certify that the foregoing five pages do contain a full and complete transcript of the record of the case wherein Zacharie and Turner are plaintiffs, and Hugh Boyle is defendant, instituted in this court, and now on the records thereof, under the number 3,103.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, on this sixteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and in the fifty-second year of the independence of the United States.

[L. S.] JOHN L. LEWIS, *Clk.*

I, Joshua Lewis, presiding Judge of the first judicial district court in the State of Louisiana, do hereby certify that John L. Lewis is clerk of the said court, and that the signature, "John L. Lewis," to the foregoing certificate, is in the proper handwriting of him, the said clerk: to his official acts as such, full faith and credit is due and owing; and I do further certify that his certificate is in due form of law.

Given under my hand and seal at the city of New Orleans, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

JOSHUA LEWIS, [L. S.]

EXHIBIT C.

STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT.

Be it remembered, that on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and twenty-five, into the district court in and for the first judicial district of the State of Louisiana, holden in the city of New Orleans, came James W. Zacharie and Samuel H. Turner, by George Eustis, Esq., their attorney, and filed the following petition, to wit:

Petition.

To the Honorable the Judge of the district court for the first judicial district of the State of Louisiana.

The petition of James W. Zacharie and Samuel H. Turner, residing in the city of New Orleans, respectfully sheweth: that Hugh Boyle, residing in Baltimore, Maryland, is justly indebted to your petitioners in the sum of three thousand one hundred and thirteen dollars and eighty cents, with interest thereon from the fifteenth day of November, eighteen hundred and nineteen, and seventeen dollars and twenty five cents, costs, by virtue of a certain judgment rendered in the circuit court of the United States for the fourth circuit in and for the district of Maryland, in favor of your petitioners against said Hugh Boyle, on the first day of May, one thousand eight hundred and twenty-one; and although the said Hugh Boyle has been amicably requested to pay said debt, he has refused to pay the same or any part thereof. And your petitioners further shew, that said Hugh Boyle resides permanently out of this State, but that he has property within the jurisdiction of this court; wherefore your petitioners pray that a general at-

tachment may issue against the lands and tenements, rights and credits, goods and effects of the said Hugh Boyle, to be found within the jurisdiction of this court; that Ambrose Nelson may be made garnishee, and compelled to answer the annexed interrogatories, and that your petitioners may have judgment for his debt aforesaid, with interest, damages and costs, and for all other further equitable relief. And your petitioners, &c. &c.

G. EUSTIS, *for petitioners.*

James W. Zacharie, one of the petitioners, makes oath that the allegations in this petition are true, as he believes, and that the defendant is justly indebted to the petitioners in the sum of three thousand one hundred and thirteen dollars and eighty cents, that the said defendant resides permanently out of this State.

J. W. ZACHARIE.

Sworn to and subscribed before me, this 24th day of May, 1825.

MARTIN GORDON, *Clerk.*

Interrogatories to be answered, on oath, by Ambrose Nelson, garnishee.

1st. Have you in your possession, or under your control, any property or credits of the defendant? If yea, state the nature and amount of the same.

2d. Are you in any manner or way indebted to said defendant? If yea, state the nature and amount of said debt or debts.

3d. Do you know of any person within the jurisdiction of this court having property of said defendant under his control, or in any way indebted to the defendant? If yea, state your knowledge as to the same.

Bond.

Know all men by these presents, that we, James W. Zacharie and Samuel H. Turner, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto Hugh Boyle, in the sum of six thousand three hunddred dollars, lawful money of the United States of America, to be paid to the said Hugh Boyle, his executors, administrators, and assigns; for which payment well and truly to be made, we bind ourselves and each of us, by himself, our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated the day of May, in the year of our Lord 1825.

Whereas the said Zacharie and Turner have this day presented a petition to the honorable the district court of the State of Louisiana in and for the first judicial district, praying an attachment of the property of Hugh Boyle;

Now the condition of the above obligation is such, that if the above bound James W. Zacharie and Samuel H. Turner shall well and truly pay, or cause to be paid, to the said Hugh Boyle, the defendant in said attachment, all such damages as the said defendant shall or may suffer in case it shall appear that the said attachment hath been wrongfully sued out, then the above obligation to be void, else to remain in full force and virtue.

J. W. ZACHARIE, [L. S.]
S. H. TURNER, [L. S.]
R. O. PRICHARD.

Signed, sealed, and delivered in the presence of,
GEORGE EUSTIS.

96.

Attachment.

THE STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT COURT.

To the sheriff of the parish of New Orleans, greeting:

Whereas due proof hath been made before the first judicial district court of the State of Louisiana, by J. W. Zacharie, that Hugh Boyle is indebted to J. W. Zacharie and Samuel H. Turner in the sum of three thousand one hundred and thirteen dollars and eighty cents; and that the said Hugh Boyle resides permanently out of the State of Louisiana;

Now, therefore, you are commanded to seize and take into your possession the goods and chattels, lands and tenements, rights, moneys, effects, and credits of the said H. Boyle, if any you find in said parish, to the amount of what will suffice to discharge the said debt and costs of suit; and that you give notice of this proceeding by leaving a copy thereof, in the French and English languages, at the last place of abode of the said defendant, if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish; and make return of this writ, and endorse thereon the manner in which you have executed it, before our court on the first Monday of August, in the year of our Lord 1825, and in the year of the independence of the United States the fifty-second.

H. FARRIE, *Dep. Clerk.*

CLERK'S OFFICE, 24*th day of May*, 1825.

Sheriff's return.

Received, May 24th, 1825, at two o'clock P. M., and served on the same day, at three o'clock P. M., copy of petition, citation, attachment, and interrogatories, in the French and English languages, on Ambrose Nelson; and attached in his hands the goods and effects of the defendant, to the amount of what will suffice, if so much he had, to discharge the debt and costs of this suit; and gave notice of this proceeding, by causing a copy thereof, in the French and English languages, to be affixed at the door of the church of the parish of St. Louis of Orleans, in New Orleans; and executed this writ in all other things as the law directs.

Returned May 24th, 1825.

G. W. MORGAN, *Sheriff.*

Citation.

THE STATE OF LOUISIANA—FIRST JUDICIAL DISTRICT COURT.

Mr. AMBROSE NELSON:

You are hereby summoned to appear at the office of the sheriff of the parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the clerk of the first judicial district court, at the city of New Orleans, in ten days after the service hereof. Witness the Honorable Joshua Lewis, Judge of the said court, the 24th day of May, in the year of our Lord 1825.

H. FARRIE, *Dep. Clerk.*

Sheriff's return.

Received, May 24th, 1825, at 2 o'clock, P. M., and served on the same day, at 3 o'clock, P. M., copy of petition, citation, attachment, and interrogatories, in the French and English languages, on Ambrose Nelson.
Returned May 24, 1825.

G. W. MORGAN, *Dep. Sheriff.*

Afterwards, to wit, on the 25th day of May, in the year aforesaid, into the court aforesaid, holden as aforesaid, came Ambrose Nelson, garnishee, and filed the following answer, to wit:

Answer.

STATE OF LOUISIANA—DISTRICT COURT, FIRST DISTRICT.

James W. Zacharie and Samuel H. Turner vs. *Hugh Boyle.*

Answer of Ambrose Nelson to the interrogatories propounded to him by the plaintiffs in this case.

To the first interrogatory he answers, that he has not in his possession, nor under his control, any property or credits of the defendant.

To the second interrogatory he answers, that he is not in any manner or way indebted to the said defendant.

To the third interrogatory he answers, that he does not know of any person within the jurisdiction of this court having property of said defendant under his control, nor in any way indebted to the defendant.

AMBROSE NELSON.

Sworn to and subscribed before me, this 25th day of May, 1825.

MARTIN GORDON, *Clerk.*

Afterwards, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, at a session of the court aforesaid, holden as aforesaid, the following order was entered on record, to wit:

Order of discontinuance. Zacharie and Turner vs. *Hugh Boyle.*

On motion of George Eustis, Esquire, of counsel for the plaintiffs, it is ordered by the court that this case be discontinued.

THE STATE OF LOUISIANA.

I, John L. Lewis, clerk of the first judicial district court of the State of Louisiana, do hereby certify that the above and foregoing four pages do contain a full and complete transcript of the record of the case wherein James W. Zacharie and Samuel H. Turner are plaintiffs, and Hugh Boyle is defendant, instituted in this court, and now on the records thereof, under the number 6,664.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, on this fifteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and in the fifty-second year of the independence of the United States.

[L. S.] JOHN L. LEWIS, *Clerk.*

I, Joshua Lewis, presiding Judge of the first judicial district court of the State of Louisiana, do hereby certify that John L. Lewis is clerk of the said court, and that the signature "John L. Lewis, clerk," to the foregoing certificate, is in the proper handwriting of him, the said clerk: to his official acts as such full faith and credit is due and owing. And I do further certify, that his certificate is in due form of law.

Given under my hand and seal, at the city of New Orleans, this 15th day of May, in the year of our Lord 1828.

JOSHUA LEWIS, [SEAL.]

And on the same day, to wit, the sixth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, the said James W. Zacharie and Samuel H. Turner, by their solicitors aforesaid, file in court here the following notice of motion to dissolve the injunction as aforesaid, to wit:

Circuit court of the United States for the fourth circuit in and for the Maryland district.

HUGH BOYLE
vs.
JAMES W. ZACHARIE & SAMUEL H. TURNER. } *Bill for injunction, &c.*

Dedimus, answers, &c.

The defendants in the above cause intend to move the court on Monday next, or so soon after as counsel can be heard, that the injunction heretofore issued in this cause be dissolved; whereof you will take notice. 6th December, 1828.

JOHN SCOTT, *Attorney for defendants.*

HUGH BOYLE, Esq., or R. B. MAGRUDER, Esq., *his Attorney.*

Afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, on motion of the complainant by his solicitors aforesaid, the said cause is set down for final hearing.

And now at this day, to wit, the eighteenth day of May, in the year aforesaid, the said circuit court here passed a final decree in the said cause, in form following, to wit:

In the circuit court of the United States for the fourth circuit, in and for the district of Maryland, sitting as a court of equity. May term, 1829.

HUGH BOYLE *vs.* JAMES W. ZACHARIE & SAMUEL H. TURNER.

This cause standing ready for a hearing, and having been submitted, the bill, exhibits, answer, and all other proceedings therein having been read and considered, and the argument of the counsel for the parties heard, it is thereupon, this eighteenth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, by the authority of this court, adjudged, ordered, and decreed, that the injunction heretofore granted in this cause be, and the same is, hereby dissolved, and that the complainant's bill be dismissed without costs.

G. DUVALL,
ELIAS GLENN.

From which said decree, so as aforesaid rendered, the said Hugh Boyle, by his solicitors, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in August next; and to him it is granted. Thereupon, it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court; and the same are transmitted accordingly.

Afterwards, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and twenty-eight, the said Hugh Boyle, by his solicitors aforesaid, tendered to the court here a bond to prosecute his said appeal, which bond was by the court here approved, and which bond is in form following, to wit:

Know all men by these presents, that we, Hugh Boyle, John B. Howell, and Stewart Brown, of the city of Baltimore, are held and firmly bound unto James W. Zacharie and Samuel H. Turner, of New Orleans, their certain attorney, executors, administrators, or assigns, in the just and full sum of ten thousand dollars, current money, to be paid to the said James W. Zacharie and Samuel H. Turner, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves, our and every of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents: sealed with our seals, and dated this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and twenty-nine.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first day of May, in the year of our Lord one thousand eight hundred and twenty-one, the said James W. Zacharie and Samuel H. Turner, by the judgment of the same court, recovered against the said Hugh Boyle, as well the sum of six thousand dollars, current money of the United States, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said Hugh Boyle to the said James W. Zacharie and Samuel H. Turner before that time made, as the sum of seventeen dollars and twenty five cents for their costs and charges by them about their suit in that behalf laid out and expended; whereof the said Hugh Boyle is convict, as of record is manifest.

And whereas, also, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the seventh day of November, in the year of our Lord one thousand eight hundred and twenty three, it was considered that the said James W. Zacharie and Samuel H. Turner should have their execution against the said Hugh Boyle, for as well the damages, costs, and charges, aforesaid, as, also, for the sum of sixteen dollars and seventy-five cents, which to the said James W. Zacharie and Samuel H. Turner in the said court was adjudged for their costs and charges which they had sustained by delay of the execution aforesaid; whereof the said Hugh Boyle is also convict, as of record is manifest.

And whereas, also, on the twelfth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, the said James W. Zacharie and Samuel H. Turner, by their attorney, prosecuted and sued forth out of the said circuit court the writ of the United States of America of fieri facias, directed to the Marshal of the Maryland district, commanding him that of the goods and chattels, lands and tenements, of the said

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Hugh Boyle, in his district being, he should cause to be made and levied the damages, costs, and charges aforesaid, and that those sums he should have before the said circuit court to be held at the city of Baltimore on the eighth day of May then next, to be rendered unto the said James W. Zacharie and Samuel H. Turner, for the damages, costs, and charges aforesaid.

And whereas, also, on the seventh day of April, in the year of our Lord one thousand eight hundred and twenty-eight, the said Hugh Boyle, by his solicitors, obtained the writs of the United States of America of subpœna and injunction, directed to James W. Zacharie and Samuel H. Turner, their and each of their agents, attorney, or attorneys, or any and all other persons acting on their behalf, and particularly the Marshal of the Maryland district, to abstain from, and absolutely surcease from further proceeding to enforce the execution of the said judgment against the said Hugh Boyle until the further order of the said circuit court.

And whereas, also, in the said circuit court, begun and held at the city of Baltimore on the eighth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, it was decreed, upon a final hearing of the motion to dissolve said injunction, that the said injunction, obtained as aforesaid, be dissolved, and that the bill filed in the said cause be dismissed without costs; from which said decree, so as aforesaid rendered, the said Hugh Boyle, by his solicitors aforesaid, hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in August next.

Now the condition of the aforegoing obligation is such, that, if the above bounden Hugh Boyle shall well and truly prosecute said appeal with effect, and pay to the said James W. Zacharie and Samuel H. Turner the amount of the aforesaid judgment, together with all such interest, damages, costs, and charges, which shall be awarded by the said Supreme Court in case he shall fail to make good his said appeal, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

HUGH BOYLE, [SEAL.]
JOHN B. HOWELL, [SEAL.]
STEWART BROWN, [SEAL.]

Signed, sealed, and delivered, in presence of
THOMAS HIGINBOTHAM.

Bond approved, 27th May, 1829.
ELIAS GLENN, *District Judge.*

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court, this eleventh day of September, in the year of our Lord one thousand eight hundred and twenty-nine.
PHILIP MOORE, *Clerk Circuit Court.*